

1 KEITH E. EGGLETON, State Bar No.159842
 Email: keggleton@wsgr.com
 2 DIANE M. WALTERS, State Bar No. 148136
 Email: dwalters@wsgr.com
 3 L. DAVID NEFOUSE, State Bar No. 243417
 Email: dnefouse@wsgr.com
 4 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 5 650 Page Mill Road
 Palo Alto, California 94304-1050
 6 Telephone: (650) 493-9300
 Facsimile: (650) 565-5100
 7

8 Attorneys for Defendants
 S. Douglas Hutcheson, Amin Khalifa,
 9 Grant Burton, Dean M. Luvisa, Michael
 B. Targoff, John D. Harkey, Jr., Robert V.
 10 Lapenta, Mark H. Rachesky, M.D. and
 James D. Dondero
 11

12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA
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15 CHARLES GRAHAM, Derivatively on Behalf of Nominal Defendant LEAP 16 WIRELESS, INTERNATIONAL, INC., 17 Plaintiff, 18 v. 19 S. DOUGLAS HUTCHESON, AMIN KHALIFA, GRANT BURTON, DEAN M. 20 LUVisA, MICHAEL B. TARGOFF, JOHN D. HARKEY, JR., ROBERT V. LAPENTA, MARK 21 H. RACHESKY, M.D., and JAMES D. DONDERO, 22 Defendants, 23 and 24 LEAP WIRELESS INTERNATIONAL, INC., 25 Nominal Defendant. <hr/> 26) CASE NO.: 08-CV-0246-L-NLS) Date: August 4, 2008 Time: 10:30 a.m. Dept: 14 Before: The Hon. M. James Lorenz
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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 4, 2008, at 10:30 a.m., or as soon thereafter as
 3 the matter may be heard, before the Honorable M. James Lorenz, located at the United States
 4 Courthouse, 940 Front St., San Diego, California, Courtroom 14, defendants S. Douglas
 5 Hutcheson, Amin Khalifa, Grant Burton, Dean M. Luvisa, Michael B. Targoff, John D. Harkey,
 6 Jr., Robert V. Lapenta, Mark H. Rachesky, M.D., and James D. Dondero (collectively, the
 7 "Individual Defendants") will and do hereby move pursuant to Rules 9(b) and 12(b)(6) of the
 8 Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (the
 9 "Reform Act") and applicable Delaware law for an order dismissing plaintiff's Verified
 10 Shareholder Derivative Complaint on the grounds that Plaintiffs have failed to state a claim
 11 against any of the Individual Defendants. Specifically, among other deficiencies: (1) plaintiff's
 12 Section 10(b) claim fails to satisfy the heightened pleading requirements of the Reform Act and
 13 Rule 9(b); (2) plaintiff's allegations in support of the breach of fiduciary duty claim fail to state a
 14 claim; and (3) plaintiff fails to state a claim for unjust enrichment.

15 This motion is based upon this Notice of Motion and Motion; the accompanying
 16 Memorandum of Points and Authorities; the Request for Judicial Notice; the Declaration of
 17 Diane M. Walters and the exhibits thereto; the pleadings, records and papers on file in this
 18 action; and such additional evidence and oral argument that the Court may consider and other
 19 matters properly before the Court.

20 Dated: June 2, 2008

Respectfully submitted,
 21 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 22 Keith E. Eggleton
 Diane M. Walters
 L. David Nefouse

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24 By: s/ Diane M. Walters

25 Diane M. Walters

Email: dwalters@wsgr.com

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Attorneys for Defendants

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S. Douglas Hutcheson, Amin Khalifa, Grant
 Burton, Dean M. Luvisa, Michael B. Targoff,
 John D. Harkey, Jr., Robert V. Lapenta, Mark
 H. Rachesky, M.D., and James D. Dondero

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